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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/967,272	09/28/2001	Carlton Bartels	CF-55	6788

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EXAMINER
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KESACK, DANIEL

ART UNIT	PAPER NUMBER
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3691

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/07/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/967,272	<b>Applicant(s)</b> BARTELS ET AL.	
	<b>Examiner</b> Dan Kesack	<b>Art Unit</b> 3691	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 07 August 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,3-6,12,13,16,17,19-21 and 23-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3-6, 12, 13, 16, 17, 19-21, 23-39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. Amendment filed August 7, 2006 has been entered and fully considered. Claims 1, 3-6, 12, 13, 16, 17, 19-21, 23-39 are currently pending. The rejections are as stated below.

#### ***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claim 1 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. 35 U.S.C. 101 requires that in order to be patentable the invention must be a "new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof" (emphasis added). Specifically the claimed invention as a whole does not accomplish a practical application. That is, it must produce a "useful, concrete and tangible result." See *State Street*, 149 F.3d at 1373, 47 USPQ2d at 1601-02. Accordingly, a complete disclosure should contain some indication of the practical application for the claimed invention. The mere fact that the claim performs generating reductions or credits of carbon dioxide emissions, and changing a cost or a volume does not satisfy the requirement of 35 U.S.C. 101. The claim may be interpreted in an alternative as involving no more than a

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manipulation of an abstract idea and therefore is non-statutory under 35 U.S.C. § 101.

The claimed invention as a whole must produce a "useful, concrete and tangible" result to have a practical application.

4. Claim 21 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Applicant's claim mentioned above is intended to embrace or overlap two different statutory classes of invention as set forth in 35 U.S.C. 101. The claim describes an apparatus, based solely on method steps. Furthermore, the claim appears to be an independent claim, but is improper for because it contains antecedent basis in claim 1. "A claim of this type is precluded by the express language of 35 U.S.C. 101 which is drafted so as to set forth the statutory classes of invention in the alternative only", *Ex parte Lyell* (17 USPQ2d 1548).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 1 rejected under 35 U.S.C. 103(a) as being unpatentable over Klein et al., U.S. Patent No. 6,709,330, in view of Sowinski, U.S. Patent No. 6,601,033.

Claims 1, 21, Klein discloses an engine for simulating the trading of options, comprising generating for a simulated entity a portfolio of simulated assets (column 4 lines 38-44 and column 5 lines 1-9), and in response to a simulated event that is separate from a trading of the simulated assets, changing for the entity the cost to obtain the simulated assets (column 13 lines 53-60).

Klein fails to teach the simulated assets being credits of carbon dioxide equivalent emissions.

Sowinski discloses a method and apparatus for generating pollution credits, and creating a market for buying, selling, and trading said credits, such as methane gas (abstract, and column 6 line 58). I would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to modify the teachings of Klein to include the teachings of Sowinski because Sowinski teaches the pollution credits are encouraged and supported by the Chicago Board of Trade (CBOT), which creates a

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market for said trading (column 4, lines 50-58). This, in effect, commoditizes the pollution credits, and allows them to be traded like any other security or option supported by CBOT, and simulated by the invention of Klein. The combination of Klein and Sowinski would contain a cost of pollution credits, which would change in response to a news event, just as Klein teaches the cost of an option changing in response to a news event (column 15 line 53-60 and table I).

Claims 3, 32, Klein teaches modifying the duration allotted for the trading of credits, wherein the duration is repeatedly modified, while constantly counting down until the end of the simulation (column 11 lines 13-37).

Claims 4-6, 24, 39, Klein teaches a simulated news announcement (column 13 lines 57-60).

Claim 12, Klein teaches receiving an input from a user and forming the simulated entity (column 4 lines 37-44).

Claim 13, Klein teaches receiving an input to review the position of the simulated entity and causing to be displayed the portfolio of the simulated entity, including positions.

Claim 13, Klein fails to teach the positions being carbon dioxide equivalent emissions. Sowinski teaches buying, selling, and trading pollution credits, such as methane gas, a carbon dioxide equivalent emission. It would have been obvious to one

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of ordinary skill in the art at the time of the Applicant's invention to modify the teachings of Klein to include the teachings of Sowinski for the reasons set forth above, regarding claim 1.

Claim 16, Klein teaches simulating the trading of securities.

Claim 16, Klein fails to teach the securities being carbon dioxide equivalent emission reductions. Sowinski teaches buying, selling, and trading pollution credits, such as methane gas, a carbon dioxide equivalent emission. It would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to modify the teachings of Klein to include the teachings of Sowinski for the reasons set forth above, regarding claim 1.

Claim 17, Klein teaches receiving an input from a user to review the news announcement and causing the news announcement to be displayed to the user (column 6 lines 32-33).

Claims 19, 20, Klein teaches receiving an input to review a timeline of sessions of trading (column 9 lines 17-22)

Claims 23, 25, 29, Klein teaches the simulated news event causes the value of the entity's holdings to change, and a new cost of the security is calculated (table I).

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Klein fails to teach the securities being carbon dioxide equivalent emission reductions. Sowinski teaches buying, selling, and trading pollution credits, such as methane gas, a carbon dioxide equivalent emission. It would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to modify the teachings of Klein to include the teachings of Sowinski for the reasons set forth above, regarding claim 1.

Claims 26-28, Klein fails to teach the securities being carbon dioxide equivalent emissions, and changing the values of said securities. Sowinski teaches buying, selling, and trading pollution credits, such as methane gas, a carbon dioxide equivalent emission. It would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to modify the teachings of Klein to include the teachings of Sowinski for the reasons set forth above, regarding claim 1.

Claim 30, Klein teaches displaying the current interest rate, which may change over the course of the game (column 7 lines 5-15).

Claim 33, the combination of Klein and Sowinski fails to teach an interface for creating the simulated news announcement. Official Notice is taken that displaying an interface for interacting with a game feature is old and well known in the art. Klein discloses an interface for interacting with the simulation. It would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to modify the



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teachings of Klein and Sowinski to include an interface for news announcement creation because it provides a user-friendly way for customization of the simulation by the system administrator.

Claim 34, Klein teaches causing to be displayed a compliance requirement (column 19 line 50 – column 20 line 12).

Claims 35-37, Klein teaches receiving bids to buy, offers to sell, requests to purchase, requests to sell, and notifications of purchases and sales (column 21 line 15 – column 22 line 37, figures 17-19). Klein fails to teach the securities being carbon dioxide equivalent emission reductions. Sowinski teaches buying, selling, and trading pollution credits, such as methane gas, a carbon dioxide equivalent emission. It would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to modify the teachings of Klein to include the teachings of Sowinski for the reasons set forth above, regarding claim 1.

Claim 38, Klein teaches causing an interface to be presented to the user, including fields defining a simulated entity (figure 1).

***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dan Kesack whose telephone number is 571-272-5882. The examiner can normally be reached on M-F, 9:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Kalinowski can be reached on 571-272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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HANI M. KAZIMI  
PRIMARY EXAMINER